

# Upper Clark Fork River Basin Steering Committee

## Meeting Summary

### February 28, 2007

#### **Introductions**

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Those in attendance included:

<b>Members</b>	<b>Group/Organization Represented</b>
Jim Quigley	Little Blackfoot River
Dwight Crawford	Deer Lodge Valley Conservation District
Jim Dinsmore	Granite Conservation District
Senator Dave Lewis	Lewis and Clark County
Bob Bushnell	Lewis and Clark Conservation District
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)
Bob Benson	Clark Fork Coalition
Marci Sheehan	Atlantic Richfield (ARCO)
Carol Fox	Natural Resource Damage Program (NRDP)
Holly Franz	PPL Montana
Stan Bradshaw	Trout Unlimited

#### **Public**

Pam Iber	ARCO
Maureen Conner	Granite County Commissioner

#### **Staff**

Jan Langel	DNRC Helena Regional Water Resources Office
Bill Schultz	DNRC Missoula Regional Water Resources Office
Gerald Mueller	Coordinator

#### **Agenda**

- Review summary of the January 17, 2007 Meeting
- Updates
  - Steering Committee membership
  - Steering Committee funding
  - NRD-ARCO settlement
  - Watershed Restoration Coalition/Clark Fork Coalition Community Restoration and Redevelopment Plan for the Upper Clark Fork Valley
- 2007 water legislation
- Water Milltown Dam water right paper
- Public Comment
- Next Meeting

#### **January 17, 2007 Meeting Summary**

The Steering Committee made no changes to the meeting summary; however, the summary was not mailed to those members of the Steering Committee who do not have email. Mr. Mueller

stated that he would mail the summary to those members.

## **Updates**

**Steering Committee Membership** - Dwight Crawford was welcomed as a representative of the Deer Lodge Conservation District on the Steering Committee. Mr. Mueller will work with DNRC Director Mary Sexton to have Avista's and ARCO's member officially changed to Nate Hall and Marci Sheehan, respectively.

**Steering Committee Funding** - Gerald Mueller reported that the \$40,000 for the 2008-09 biennium (\$20,000 annually) that had been included in the Governor's budget for the DNRC Water Resource Division budget was removed from HB 2 by the Natural Resources Subcommittee of the Appropriation Committee. However, HB 2 was tabled, and the budget will now be considered in six separate bills. Senator Lewis stated that he will attempt to provide the \$40,000 in the Senate.

**NRD-ARCO Settlement** - Carol Fox reported that attorneys for the State of Montana and ARCO recently filed a status report with the federal district court in Helena concerning the negotiations to reach a settlement of the remaining Natural Resource Damage Claims. This filing was reported in a newspaper story that noted that the State and ARCO have reached a confidential agreement in principle for the three outstanding NRD claims, including the mainstem of the Clark Fork River. Before this settlement becomes final and public, however, the State, ARCO and the EPA must also reach agreement for the integrated remediation and restoration plan for the Clark Fork River site. The parties are hopeful that a draft integrated remediation and restoration plan will be released by the end of the summer and that the court may approve a final plan by the end of this year.

**Watershed Restoration Coalition/Clark Fork Coalition Community Restoration and Redevelopment Plan for the Upper Clark Fork Valley** - Bob Benson reported on this item. He stated that the Clark Fork Coalition (CFC) and the Clark Fork River Technical Assistance Committee (CFRTAC) initiated this project to facilitate development by the people in the Deer Lodge Valley of a vision in light of the pending changes that the Superfund cleanup of the Clark Fork River will bring about. In 2004, CFC and CFRTAC convened an initial meeting to develop a vision statement at Fairmont Hot Springs. After that meeting, the Watershed Restoration Council (WRC) offered to take the lead in developing a plan to implement the community vision. Additional meetings were held that resulted in a plan addressing five themes: cleanup and restoration, education, land use planning, water usage, and economic development. At the most recent meeting on January 25, 2007, the attendees finalized and prioritized the portions of a community plan corresponding to the five themes. Mr. Benson stated that he attended this meeting and offered the Steering Committee's assistance with the water usage portion.

Together, CFC, CFRTAC, and WRC recently hired a coordinator for the upper Clark Fork watershed, Renee Myers. Ms. Myers will be managing this project.

## **2007 Water Legislation**

Holly Franz passed out the list of water bills still alive as of transmittal. The list is included below in Appendix 1. Ms. Franz, Stan Bradshaw, Jan Langel, and/or Mike McLane led the discussion of the following bills.

**LC 1383** - The text of this bill is not formally available, and it is not included in Appendix 1. Because it includes an appropriation not in HB 2, it will be heard as a "cat and dog" bill in the

House Appropriation Committee and is subject to a March 29, 2007 transmittal deadline. Preliminary drafts of LC 1383 have been circulated by Krista Lee Evans, the Legislative Services staff person drafting the bill for Rep. McNutt. It has gone through several iterations. Portions of the bill appear to be modeled on a Washington Department of Ecology administrative rules.

LC 1383 replaces two bills, both of which were tabled in committee, HB 138, which was the DNRC augmentation bill, and HB 373, the Stockgrowers bill to address the Montana Supreme Court decision in TU vs. DNRC. These two bills were heard in a joint hearing that was reminiscent of the water leasing bill hearings of the 1980's because of the number of people testifying both for and against them.

LC 1383 now attempts to protect senior water rights by requiring a hydrological report as a part of new ground water permit applications. It voids augmentation plans previously approved by the DNRC outside of the upper Clark Fork River basin, the only area of the state for which statutory authority exists for augmentation plans. It also subjects approved ground water permits to a monitoring period and possible permit modification as a result of the monitoring.

Because of the number of issues it attempts to address, its complexity, and its \$500,000 appropriation, passage does not seem likely.

The Steering Committee discussed taking a position on the bill, including recommending that it be simplified to a statewide, two-year test of the augmentation requirements existing for the upper Clark Fork River basin. In the absence of an introduced version of the bill, the Steering Committee opted not to take a position on it.

**HB 473** - This bill abolishes the adjudication fee for all water right holders, and appropriates general fund dollars to complete the adjudication. It provides no refunds for people who paid the fee and maintains the requirement and penalty for water right holders that did not pay.

**HB 39** - This bill provides that unless specific provisions are made otherwise, water rights automatically transfer with the property when property is sold. The transfer will be accomplished through linking the DNRC water rights data base and the Department of Revenue's cadastral data base. A transfer fee must be paid at time of closing.

**HB 205** - This bill changes the way controlled ground water areas are created. Under the bill the petition requirement is changed to 51% of the water users in the area. The process for approving the area is changed from rule making to contested case procedures.

## **Milltown Dam Water Right Paper**

The Steering Committee discussed the draft outline of the paper prepared by Gerald Mueller and circulated by him via email. The Steering Committee agreed to the draft outline as modified by the state agency members. See Appendix 2. The next step in preparing the paper is for members to circulate to and discuss the outline with their various constituencies. At the next meeting, the Steering Committee will adopt an outline and that will be the basis for writing the initial draft of the paper.

## **Public Comment**

There was not additional public comment.

## **Next Meeting**

The next meeting is scheduled for May 2, 2007 at a location in Deer Lodge to be determined.

## Appendix 1

### Alive Water Bills

<b>Bill Type</b>	<b>LC - Num.</b>	<b>Primary Sponsor</b>	<b>Status</b>	<b>Status Date</b>	<b>Short Title</b>
HB20	LC0426	Walter McNutt	(S) Hearing -- (S) Judiciary	03/09/2007; 9 AM, Rm 303	Clarify injunctive relief availability for water right enforcement
HB36	LC0230	John L Musgrove	(S)Hearing -- (S) Natural Resources and Energy	01/29/2007; 3 PM, Rm 422	Repeal sunset for loans to water users
HB39	LC0225	Walter McNutt	(H) Hearing -- (H) Appropriations	02/26/2007; 8 AM, Rm 102	Ownership update for water rights
HB87	LC0226	Douglas Cordiner	(S) Referred to Committee -- (S) State Administration	01/19/2007	Water commissioner authority over changes
HB205	LC1252	George Everett	(H) Transmitted to Senate	02/24/2007	Revise controlled ground water laws
HB304	LC1599	Kevin T Furey	(H) Rereferred to Committee -- (H) Appropriations	02/20/2007	Create interim water policy committee
HB443	LC2102	Janna Taylor	(H) Hearing -- (H) Appropriations	02/09/2007; UPON ADJ, Rm 102	Appropriate funds to study leasing of water from Hungry Horse dam
HB444	LC2101	Janna Taylor	(H) Hearing -- (H) Appropriations	02/09/2007; UPON ADJ, Rm 102	Continuation of water use management by Clark Fork Basin task force

HB473	LC2531	John W Ross	(H) Rereferred to Committee -- (H)Appropriations	02/14/2007	Eliminate water adjudication fee
HB511	LC1424	Jonathan Windy Boy	(H) Hearing -- (H) Appropriations	02/09/2007; UPON ADJ, Rm 102	Promote and fund regional water systems
HB717	LC2443	Wayne Stahl	(H) Transmitted to Senate	02/27/2007	Ratify Bowdoin wildlife refuge water compact
HJ5	LC0856	Michael Lange	(H) Transmitted to Senate	02/03/2007	Urge support for Montana Missouri River water rights
HJ34	LC2332	Kendall Van Dyk	(H) Transmitted to Senate	02/21/2007	Urge protection of Big Horn River
HJ40	LC2469	Jonathan Windy Boy	(H) Transmitted to Senate	02/26/2007	Urge Congress to prioritize regional water projects
SB128	LC0435	Jesse Laslovich	(S) Transmitted to House governing	02/20/2007	Eliminate termination of FWP instream flow and revise laws
SB178	LC0882	Dave Lewis	(S) Transmitted to House	01/16/2007	Remove Milltown dam reference in Clark Fork steering committee law
SB187	LC1985	Keith Bales	(S) Transmitted to House	01/16/2007	Fort Keough reserved water rights compact
SB248	LC0951	Bob Story	(S) Transmitted to House	02/01/2007	Ratify USFS water compact
SB324	LC2008	Verdell Jackson	(S) Transmitted to House	02/08/2007	Revise ground water data collection procedures

SB365	LC1555	Bob Story	(S) Transmitted to House	02/09/2007	Revise laws related to water distribution and water commissioners
SB370	LC1682	Bill Tash	(S) Transmitted to House	02/08/2007	Revise law on water right abandonment
SB376	LC2009	Verdell Jackson	(S) Transmitted to House	02/24/2007	Revise water marketing law
SB450	LC2385	Carol C Juneau	(S) Transmitted to House	02/28/2007	Extend water compact commission



## Appendix 2

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# Outline of the Milltown Dam Water Right Paper

March 6, 2007

## I. Introduction

- A. Pending dam removal
- B. Removal will affect the Milltown Dam water right(s)
- C. Purpose of the paper
  - 1. Identify and discuss alternatives for the water right(s)
  - 2. Inform basin water users about the alternatives

## II. Montana Water Law

- A. Article 1X Section 3(3) of Montana's Constitution establishes state ownership of the state's water and the right of her people to use water beneficially.
- B. Definition of a water right
- C. Prior appropriation doctrine
  - 1. First-in-time, first-in-right
  - 2. Use it or lose it
  - 3. Law regarding abandonment
  - 4. Water right call mechanism/process
- D. Appropriation of Water
  - 1. General provisions and rules
  - 2. Change of use
    - a. Point of diversion
    - b. Place of use
    - c. Purpose of use
    - d. Place of storage
    - e. Special criteria for uses with 5.5 cfs/4,000 acre-feet per year
    - f. Temporary leasing provisions
    - g. Approval criteria
      - i. Adverse effects tests
      - ii. Historic use
      - iii. Rule requirements
- D. State wide water rights adjudication

## III. Milltown Dam Water Rights

- A. Existing hydropower water rights
  - 1. Claim features and attributes
  - 2. Status
- B. Superfund/NRD obligations
  - 1. Milltown consent decree provisions specific to the Milltown water right

## IV. Milltown Dam Water Right Change Alternatives

- A. Abandonment
- B. Alternative uses
  - 1. Transfer ownership to new or existing hydropower facilities

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- a. Requires change of point of diversion and place of use/storage
- b. Enforcement implications
- 2. Transfer to consumptive use
  - a. Unlikely to pass adverse affects test
- 3. Transfer to fishery instream flow right
  - a. Requires change of purpose of use from hydropower to fishery
  - b. Amount of right based on fishery needs
- C. Transfer of ownership
  - 1. Other governments
    - a. Federal (e.g. Department of Interior)
    - b. State (e.g. Montana Department of Fish, Wildlife and Parks)
    - c. Tribes (e.g. Confederated Salish and Kootenai Tribes)
  - 2. Private entities

## **V. Over view of Upper Clark Fork Basin Water Budget**

- A. Basin & sub basin yields

## **VI. Upstream Water Uses**

- A. Junior water rights
  - 1. Location
  - 2. Purpose
  - 3. Priority date
  - 4. Amount
- B. Basin by basin discussion
  - 1. Existing water allocation activities
  - 2. Limiting water rights
  - 3. Priorities
  - 4. Management strategies

## **VI. Enforcement and Management Alternatives**

- A. Water right calls
- B. Low flow water management
  - 1. Enforced through water commissioners
  - 2. Implemented through voluntary drought plans
  - 3. Conditioning in the change of use process
- C. Other